

REMARKS

Claims 4-17, 19-27, 32, 33, 35-51, 55-66, 71, 72 and 74-82 are pending.¹ Claims 16, 17, 19, 32, 33, 35, 71, 72 and 74 have been amended. Claims 3, 18, 34, 54 and 73 have been cancelled without prejudice. Favorable reconsideration is requested.

Claims 3, 18, 34, 54 and 73 were rejected under 35 U.S.C. § 103 over Miller. Claims 4, 7, 10, 13, 16, 17, 32, 33, 55, 58, 61, 64, 71 and 72 were rejected under 35 U.S.C. § 103 over the admitted prior art in view of U.S. Patent 6,330,429 (He). Claims 19, 35 and 74 were rejected under 35 U.S.C. § 103 over Miller in view of He. The cancellation of claims 3, 18, 34, 54 and 73 renders their rejection moot. Applicants submit that the amended independent claims under consideration are patentable for at least the following reasons.

The independent claims each recite, inter alia, calculating an average value of the use of a resource, such as power, or an average number of the use of codes, which was measured *during a data transmission time*. The resource to be used, e.g., power or the number of codes, is then controlled based on the average.

This feature is not described in the admitted prior art. In the known 3GPP standard the measurement is performed in a prescribed measurement period, separate from the period of data transmission. The position was again taken in the Office Action that this feature is taught by He. Applicants disagree.

The Office Action referred to the statement in He at col. 8, lines 25-31 relating to “real time” measurement. Applicants submit that the term “real time” measurement does not connote to one skilled in the art a measurement that is taken during a data transmission period. In fact, it is believed clear that, when the cited portion of He is taken as a whole, as it must be, that real time as used by He refers to a measurement taken during a specified measurement period.

¹ Claims 5, 6, 9, 11, 12, 20-27, 36-51, 56, 57, 60, 62, 63 and 75-82 have been withdrawn from consideration.

For example, in the same column in which the reference to “real time” occurs, He states that the signal parameter measurer *periodically* takes measurements. Moreover, at col. 3, lines 45-65, He states that the signal parameter values result from a measurement sample “measured over a measuring duration.” Since He is clearly referring to very same measurements in all three cases, it is believed clear, when He is taken as a whole, as it must be, that “real time” measurement in the cited portion of He means measurements taken periodically during a measurement period. Thus, the cited portion of He does not teach or suggested the recited feature of taking the measurement during a data transmission period.

For at least this reason, even when combined, He and the admitted prior do not teach or suggest all of the limitations of independent claims.

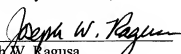
Independent claims 19, 35 and 74 were rejected over Miller in view of He, and, as with the abovementioned rejections, He was applied as allegedly teaching measuring the number of use of the codes during the data transmission time. As was discussed above, Applicants submit that He does not teach or suggest the feature for which it is relied upon. For at least this reason, the cited art does not teach or suggest the recited limitations.

The dependent claims are believed patentable for at least the same reasons as their respective base claims. In view of the cancellation of rejected claims, and the rewriting of the allowable claims into independent form, entry of this Amendment is believed proper as reducing the number of issues.

In view of the above amendments and remarks, applicants believe the pending application is in condition for allowance.

Dated: April 5, 2010

Respectfully submitted,

By 
Joseph W. Ragusa
Registration No.: 38,586
DICKSTEIN SHAPIRO LLP
1633 Broadway
New York, New York 10019-6708
(212) 277-6500
Attorney for Applicants